IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18-6-2007

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THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

C.R.P.NPD Nos.1071 and 1162 of 2006

John Mathew .. Petitioner in both revisions Landlord

vs

P.Naresh Kumar .. Respondent in both revisions Tenant

CRP 1071 of 2006 preferred under Sec.25 of the Tamilnadu Buildings (Lease and Rent Control) Act 18/1960 as amended by Act 23/1973 and Act 1 of 1980 against the judgment and decree dated 20.1.2006 passed by the VIII Judge, Court of Small Causes, Chennai-Rent Control Appellate Authority in RCA No.966 of 2004 reversing the judgment and decree dated 26.7.2004 passed by the XIII Judge, Court of Small Causes, Madras (Rent Controller) in RCOP No.912 of 2003.

CRP 1162 of 2006 preferred under Sec.25 of the Tamilnadu Buildings (Lease and Rent Control) Act 18/1960 as amended by Act 23/1973 and Act 1 of 1980 against the judgment and decree dated 20.1.2006 passed by the VIII Judge, Court of Small Causes, Chennai-Rent Control Appellate Authority in RCA No.740 of 2004 reversing the judgment and decree dated 16.3.2004 passed by the XII Judge, Court of Small Causes, Madras (Rent Controller) in RCOP No.335 of 2003.

For Petitioner : Mr.K.P.Ashok

For Respondent : Mr.P.B.Balaji

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COMMON ORDER

This order shall govern these two revisions which have arisen from an order of the VIII Judge, Court of Small Causes, Madras, made in two RCAs namely RCA No.966/2004 at the instance of the tenant and RCA No.740/2004 at the instance of the landlord who failed in both the forums.

2.The Court heard the learned Counsel on either side and looked into the materials available.

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3.The landlord approached the Rent Controller originally with an application for eviction in RCOP No.335 of 2003 on the ground of willful default alleging that the property was let out to the tenant in the month of July 1999; that the monthly rental was Rs.36,000/-; that there was a written agreement, a registered one, between the parties; that he was put in possession also; that there was a default in making payment of rental, which was willful, and hence, an order of eviction should be passed. The same was contested by the tenant, and it was also dismissed on 16.3.2004 by the XII Judge of Court of Small Causes, wherefrom RCA No.740/2004 was filed.

4.The same landlord filed another RCOP No.912 of 2003 on the grounds that the tenant, when he was in occupation of the building, has made number of alterations and has demolished number of portions, which has directly impaired the use, utility and value of the building, and thus, he has committed an act of waste, and he was to be evicted. The said application was seriously contested by the tenant. It was taken up by the XIII Judge, Court of Small Causes, and the application was allowed on 26.7.2004. Aggrieved, the tenant took it on appeal in RCA No.966 of 2004. The said appeal was taken up by the appellate authority along with the other appeal for enquiry, and a common judgment was rendered, whereby the petitions filed by the landlord, were dismissed. Hence, these revisions have arisen before this Court.

5.Advancing his arguments on behalf of the revision petitioner, the learned Counsel would submit that in the instant case, there was a written agreement between the parties; that there is a specific Clause in the lease deed that the lessee shall not carry out any structural alterations whatsoever in the demised premises; that despite the same, so many alterations were made; that all have been narrated in the course of the application; that an Advocate Commissioner was also appointed; that he made an inspection of the premises after notice to the parties; that he has put 9 Clauses in his report, wherein he has pointed out that alterations have been made in the building and even the ceramic tiles were removed from the field, and some of the walls have been demolished; that the petitioner examined himself as P.W.1 where he has categorically stated about the alterations which are structural in nature; that it is pertinent to point out that the respondent-tenant also examined himself as R.W.1; that he has also admitted what was all stated by the Commissioner in his report; that agreeing with the case of the petitioner-landlord, the Rent Controller has given a detailed order recording a finding that all those structural alterations have been done, and they have been noted by the Commissioner in his report, and they are all nothing but act of waste, and therefore, the petitioner-landlord was entitled for an order of eviction and accordingly, passed so; but, the appellate forum has set aside that order on the grounds that they were not structural alterations, and they cannot be termed as an act of waste; but, they are all adding to the value of the

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property, and the Advocate Commissioner was not technically qualified, and he is not competent to speak about the act of waste, and under the circumstances, the order of the Rent Controller was to be set aside, and accordingly set aside. The learned Counsel took the Court to the part of the Commissioner's report and the admissions made by the respondent-tenant before the Rent Controller as to the alterations made, and also relied on the lease deed entered into between the parties. The learned Counsel would submit that Clause No.14 of the lease deed speaks about the fact that the lessee should not carry out any structural alterations; that under the circumstances, the appellate forum should have affirmed the order of the Rent Controller, but failed to do so, and hence, both the revisions have got to be ordered, and the order of eviction has got to be restored.

6.Insofar as the second application, it is contended by the learned Counsel for the petitioner that it is an admitted position that originally, the rental was Rs.36,000/-, as per the lease deed; that the only plea that was taken by the tenant before the Rent Controller was that there was an advance of Rs.3 lakhs with them, and it was not a part of the agreement, and on the next day to the agreement, there was a demand draft given, and it was made for the purpose of advance; that in view of the fact that advance was available, both the authorities below have found that there was default, but, it cannot be termed as willful default in view of the advance in the hands of the landlord; that the said finding was also affirmed by the appellate forum; that the said view taken by the authorities below is erroneous, and it has got to be set aside. In support of his contention, the learned Counsel relied on a decision of the Apex Court reported in (1993) 2 SUPREME COURT CASES 614 (VIPIN KUMAR V. ROSHAN LAL ANAND AND OTHERS).

7.Countering the above contentions, the learned Counsel for the respondent-tenant would submit that in the instant case, there was no act of waste at all; that the Advocate Commissioner has gone to the spot, made an inspection and filed the report; but, a reading of the report would clearly reveal that it is true that there were alterations and additions made; but, they were necessary for carrying on the business of the tenant; that these alterations and additions have added the value of the building; that it also added to the use and utility of the building, and under the circumstance, at no stretch of imagination, it could be termed as act of waste. The learned Counsel also relied on Clause 15 of the lease deed, which, according to him, would permit the tenant to make necessary alterations and additions suitable to the business, which are temporary in nature. The learned Counsel would further submit that the parties entered into the agreement for making such alterations and additions which have been actually done by the tenant, and under the circumstances, though the Rent Controller has taken an erroneous view, the same was set aside by the appellate forum; that the appellate forum has clearly pointed out that the Advocate Commissioner was not technically qualified, and he cannot speak about the alterations and additions, whether there are acts of waste or they added to the use, utility and

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value of the building, and under the circumstances, the order of the appellate forum has got to be sustained. The learned Counsel reiterated the findings of both the forums insofar as the ground of willful default. In support of his contentions, the learned Counsel relied on a decision of the Apex Court reported in 2005-4-L.W. 1 (HARI RAO V. N.GOVINDACHARI AND OTHERS).

8.The Court paid its anxious consideration on the submissions made, looked into the materials available and made a thorough scrutiny of the decisions relied on by the respective sides.

9.Admittedly, the respondent-tenant occupied the building of the revision petitioner-landlord in July 1999 pursuant to a lease agreement, a registered one, wherein he has agreed to pay Rs.36,000/- as monthly rental, and he was paying so to some extent. Thereafter, according to the landlord, there was a default and also willful default. Now, both the authorities below have found that in view of the decision of the Supreme Court, while there was admittedly an advance of Rs.3 lakhs available, there was default; but, it cannot be stated to be willful default. Therefore, as far as that ground is concerned, the finding of the both the authorities below have got to be affirmed.

10.As far as the other application filed by the landlord seeking eviction on the ground of act of waste is concerned, this Court has to necessarily restore the order of the Rent Controller. In the instant case, an Advocate Commissioner was appointed to make an inspection of the property, and the Advocate Commissioner on notice, made an inspection of the property. In his report, he has mentioned the act of waste as detailed below:

> "1.Main walls (shown in orange) in front facing 2nd Avenue Road was demolished and broken in several places and openings for installation of some rolling shutters were made.
> 2.New brick wall with beams and pillars being constructed in the front shed shown as Red Colour.
> 3.Two RCC pillars with Plinth beam being erected inside the front shed main wall in the front at place marked A1 and A2.
> 4.Ceramic tiled flooring being fully unearthed (Removed).
> 5.The western side main wall broken in two places for window gaps shown as Brown Colour.
> 6.The Southern and Eastern side of main wall of FOL and wash area being demolished in area shown as B1 (as shown in Green colour).
> 7.The main wall of the main building (rear side main portion) facing 11th Main Road, demolished for making door way opening, shown in Pink Colour.
> There were building materials such as bricks, sand, jelly, etc., stocked both outside and inside the premises. Further there was lot of debris lying in several places inside the petition premises.

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8.The Glazed tiles in several portions in FOL area (B1) broken and removed.
9.Wall plastering being removed in several places in front light roofing shed area."

11.Now, at this juncture, it is pertinent to point out that all the alterations and additions which are noticed by the Advocate Commissioner, were actually mentioned in the course of the pleading. When the petitioner-P.W.1 has been examined, he has spoken about all these facts. Now, the comment made by the opposite side that no one further witness was examined would be futile. Once the Advocate Commissioner, an Officer of the Court, was appointed, and he made an inspection on notice, and he filed the report, wherein he has enumerated all the alterations and additions as found therein, and further the respondent-tenant as R.W.1 has also in the course of his evidence at the time of the cross-examination, has affirmed what are all found in the course of the Commissioner's report, this Court is of the considered opinion that it does not require any more evidence.

12.The next question that would arise for consideration would be whether these additions and alterations could be considered as act of waste or not. The learned Counsel for the respondent would submit that it is true that alterations have been made, but they have added to the utility and value of the building. The learned Counsel for the respondent read the provisions of Sec.10(2)(i) and would submit that so long as the act of waste is not found or noticed or shown, the application deserves an order of dismissal. This Court is unable to agree with the contentions put forth by the learned Counsel for the respondent-tenant. It would be more apt and appropriate to reproduce Clauses 14 and 15 as found in the lease deed, a registered one, entered into between the parties. Clause 14 reads as follows:

"14.The LESSEE shall not carry out any structural alterations whatsoever in the 'Demised Premises'..."

Clause 15 reads thus:

"The LESSEE is permitted to make necessary alterations and additions suitable to the business, which are temporary in nature and will not in any manner affect the structure of the 'Demised Premises'...."

13.Clause 14 would clearly reveal that the lessee shall not carry out any structural alterations, and if at all he has to make any alterations or additions necessary for carrying on the business, he can make so, which are temporary in nature, but not a permanent one. Added further, Clause 15 makes it clear that the lessee should not in any manner affect the structure of the demised premises. What are all stated by the Commissioner in his report, would clearly indicate the demolition of the walls and removal of the ceramic tiles in the floor, etc. Now, the contention that these alterations added to the value and utility of the building can, at no stretch of imagination, be countenanced. What are all could be seen is that the so-called

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alterations and additions are not temporary in nature; but, they have been done in a manner which would affect the structure of the demised premisses. What has been done by the tenant is nothing but in violation of the Clause 14 which stipulates that the lessee should not carry out any structural alterations whatsoever in the demised premises. It is not the case of the respondent-tenant that he obtained consent from the petitioner-landlord to make such alterations or additions; but, it is a case where all the things done by him as narrated above, would clearly indicate that it was nothing but an act of waste.

14.So far as the decisions relied on by both sides are concerned, this Court has no quarrel with the same; but, the decision relied on by the respondent-tenant, cannot be applied to the present facts of the case. On the contrary, the decision relied on by the petitioner-landlord, could be well applied to the present facts. Under the circumstances, there was an act of waste, and the petitioner is entitled for an order of eviction. Hence, the order of the appellate forum in RCA No.966/2004 can be made undone by upsetting the same. Accordingly, it is set aside, and the order of the Rent Controller in RCOP No.912 of 2003 is restored, and the application is ordered. As far as RCA No.740 of 2004 is concerned, the order of the appellate forum is confirmed. Time for eviction is 6 (six) months. An affidavit of undertaking shall be filed within one week herefrom.

15.In the result, C.R.P.No.1071 of 2006 is allowed, and C.R.P.No.1162 of 2006 is dismissed. No costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To:

1.The Registrar, Court of Small Causes, Chenani.
2.The VIII Judge, Court of Small Causes, Chennai.
3.The XII Judge, Court of Small Causes, Chennai.
4.The XIII Judge, Court of Small Causes, Chennai.

+ 2 ccs to Mr. P. Ashok Advocate CCSR Nos.35356, 35357

+ 2 ccs to Mr. P. B. Ramanusam, Advocate CCSR No.35523, 355022

Nsv/

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